

Testimony of
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Committee on Resources

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Good morning, Mr. Chairman and Members of the Committee:

I am Dr. William T. Hogarth, the Assistant Administrator for Fisheries, NOAA. I want to thank you for the opportunity to be here today. I also want to commend you, Mr. Chairman, and the Committee, for all of the work that you have done over the past many months to move forward on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

It was just about a year ago that I testified before you and discussed the scope of many of the issues facing the Committee with respect to reauthorization of the MSFCMA. Since then, a lot has happened. Inside NOAA, we have been discussing a broad range of ideas. We convened an internal working group that developed ideas for a number of possible changes to the Act. And the Committee has been busy, holding many hearings around the country and preparing the discussion draft bill that you shared with us.

We do not have any specific legislative proposals for you today; but we would be glad to continue working with your staff as it fleshes out the many ideas that are being widely discussed throughout the country.

The significant amendments that were made in 1996 to the Act by the Sustainable Fisheries Act are only now beginning to take hold. We believe that these provisions deserve a more complete opportunity to take hold before enacting any major changes to the basic cornerstones of the law.

However, we also recognize that many in the fisheries constituencies have been concerned about many of the most basic concepts contained in the Act both before and after the Sustainable Fisheries Act. We believe that even some of the modest changes currently being discussed

have the potential to greatly improve our fishery management processes under the Act.

Today I would like to spend a few minutes discussing with the Committee the results of our working group, as well as our thoughts concerning some of the fundamental issues of marine fisheries governance facing us today.

Results of the NOAA Fisheries Working Group

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, known as the Sustainable Fisheries Act, included the most comprehensive revision of the basic law since it was first enacted in 1976. We in NOAA Fisheries, along with many in our extended fishery policy community, have been thinking seriously about reauthorization of the Act for three years. Last year, as these efforts intensified, NOAA Fisheries convened a working group that considered more than 60 potential problem areas in the administration of the Act. We have narrowed that list to those that we believe might make the Act work better. We have discussed many of these issues with several of our key constituencies, including the chairs of the Regional Fishery Management Councils and the Marine Fisheries Advisory Committee.

Our discussions and analysis reflect the view that the Magnuson-Stevens Act provides a basically sound legislative and procedural framework, and that only relatively modest changes are warranted. The issues that we considered mostly fell into the following major categories:

- (1) Fishery management plan (FMP) review and comment procedures
- (2) Statutory definitions
- (3) Fisheries law enforcement
- (4) Collection and use of economic and social data
- (5) Fisheries Observers
- (6) Fishing capacity reduction

I would like to call the attention of the Committee to some of the highlights and principal themes surfaced by the working group.

Fishery Management Plan Procedures. With respect to fishery management plan reviews and comments, we have noted some inadvertent problems in the 1996 amendments to the Magnuson-Stevens Act. Our highest priority concern in this area is the need to recouple the deadlines and procedures governing the FMP review and comment procedures with the review of implementing regulations. In addition, NOAA Fisheries would like to explore ways of improving the Secretarial review process. Strengthening the preliminary Departmental review and the NOAA/Council consultation process could result in fewer emergency actions and, at the same time, make them more effective.

Definitions. Currently, the Act uses the terms Aoverfished@ and Aoverfishing@ interchangeably, which makes it confusing for the public to understand the status of any given stock. AOverfished@ applies to the state of a fishery resource, while Aoverfishing@ applies to the act of fishing. In other words, the term Aoverfished@ draws attention to the resource, while the word Aoverfishing@ denotes a level of human activity that adversely affects the resource. This distinction is important because of its implications for rebuilding schedules.

Improving Law Enforcement and Compliance. With respect to fishery law enforcement, we are looking for ways to improve compliance with domestic fishery management regulations, and with various U.S. commitments in regional and international organizations. A fundamental problem that NOAA Fisheries and the U.S. Coast Guard have in enforcing our management regulations is the general absence of effective deterrents. We are considering ways to generally strengthen the hand of our fisheries law enforcement authorities in deterring and prosecuting violations. A high priority in this area would be to increase the maximum penalty, and promote more effective State-Federal partnerships in fisheries law enforcement.

Social and Economic Information. The collection and use of economic and social data are increasingly important in the entire fishery management process. Under the Magnuson-Stevens Act and other laws (e.g., the National Environmental Policy Act and the Regulatory Flexibility Act) and various Executive Orders, we and the Councils are required to complete a number of economic and social assessments associated with management actions. One general problem that we have had in meeting these mandates is a lack of adequate, up-to-date, and comprehensive information, particularly fishery and fishery dependent community economic and social data. We would like to improve the Councils' and our ability to conduct these assessments in conformity with these mandates. Priorities would be obtaining economic information from processors; expanding the accessible scope of economic data; and dealing more effectively with proprietary and confidential data.

Fisheries Observers. Sound science and fisheries management rely in many instances on data obtained from on-board fisheries observers. However, provisions for collection of observer data have not been adequately addressed in the Magnuson-Stevens Act. The 1996 Sustainable Fisheries Act amendments made significant progress on this issue, but only with respect to federally managed fisheries in the North Pacific. To meet the need for

expanded observer programs, the Secretary should be allowed broad authority to prepare statistically valid, mandatory monitoring plans for all fisheries. It would also be helpful if the Secretary were given the authority to establish, in cooperation with the Councils, a mechanism to pay for the costs of the

monitoring plan in an equitable manner.

Fishing Capacity Reduction Program Financing. The last several years have witnessed mounting concerns over excessive levels of harvesting capacity in our federally managed fisheries. Overcapacity is basically a domestic concern, but the United States has also addressed this issue through an international initiative, the United Nations Food and Agriculture Organization-sponsored international plan of action on the management of fishing capacity. In the domestic sphere, the Councils and NOAA Fisheries have dealt with this problem through a number of means, including fishery management actions and recourse to buybacks of overcapacity in selected fisheries. The 1996 amendments to the Magnuson-Stevens Act authorized a fishing capacity reduction program in Section 312(b)-(e). NMFS acknowledges that these provisions could be implemented more effectively and, accordingly, we are investigating changes that would facilitate the development and approval of specific fishing capacity reduction programs that might be used in concert with complementary management tools such as entry limitations and individual quota systems.

Additional MSFCMA Reauthorization Issues

Mr. Chairman, in addition to the considerations of our working group last year, there are other issues that are important to the governance of our marine fisheries that many in the fisheries community are talking about. We in NOAA have been considering these for a long time. Many of these issues have been raised at several of the Committee=s hearings. However, while they are important, they require increased communication and careful implementation. We have not had the opportunity to consult with the Councils or MAFAC on these ideas as we did on the working groups= considerations, and do not have any formal proposals to share with you. I would like to discuss our current thinking in NOAA Fisheries on many of these ideas in hopes of stimulating discussion and moving forward our consideration of these important issues.

Individual Fishing Quotas. Perhaps no question has dominated fishery policy debates so consistently and pervasively since the earliest days of the Act as have Individual Fishing Quotas (IFQs). The first major national workshop on IFQs for the regional fishery management councils was held in Denver in 1977. Since then the issue has never failed to engender lively debate all around the country. Today we have four IFQ programs in place. However, we also have many limitations on the use of IFQs that arguably limit their effectiveness. In fact, there is even currently a moratorium on the adoption of new IFQ programs by the Councils until October of this year.

As I testified at the Committee=s February 13, 2002 IFQ hearing, NMFS concurs with the National Academy of Sciences report that the existing moratorium on new IFQs should be allowed to lapse in October 2002. We believe that, in some federally managed fisheries, we can manage resources with greater efficiency if the Councils and NMFS have IFQs available as a tool. We will be pleased to work with Congress as it considers legislation to set additional appropriate conditions under which new IFQ programs could be approved. The IFQ programs that are in place have worked well and receive wide support within the affected fishing industry. It is unfortunate and unreasonable that this one tool should be singled out for continued prohibition.

Several difficult and controversial issues remain regarding IFQs. These are broader than the Councils' prerogative and may require national level guidance to Councils and regions where they are used. Congress ought to allow the regional councils flexibility and discretion to address fishery-specific characteristics. NMFS is examining these and other IFQ issues such as foreign ownership, the collection of some share of windfall profits and/or economic rent, and caps on cost recovery fees. Your proposed language provides a good starting point to reauthorize IFQs. We would like to work with the Subcommittee on how best to ensure the final language in a reauthorized Magnuson-Stevens Act is consistent with our proposal outlined in the FY 2003 Budget and can be implemented and operated most efficiently.

Ecosystems. Many suggestions are being made that would try to promote the application of ecosystems principles to marine fishery conservation and management. We think that these efforts are heading in the right direction, and are consistent with current law. It has been elementary to note the relationships among fish stocks, and between fish stocks and their marine and estuarine environments; but it is much more difficult to put ecosystems management into practice.

The data and the analytical and decision models currently do not fully support the implementation of a comprehensive approach to fisheries ecosystems. Nevertheless, this is a direction that we need to move in. We would like to see each Council develop an overall statement that considers the interrelationships of all of the fisheries that the Council has under its management. This would be the precursor in future years for detailed and comprehensive fisheries ecosystems plans.

We also would like to explore strengthening the basic policies and purposes of the Act in the way that they emphasize the ecosystems implications of fisheries conservation and management.

Bycatch. Among the major provisions of the Sustainable Fisheries Act were requirements aimed at reducing and minimizing bycatch. Although we have made some progress in this direction over the last five years, the Act still lacks precise bycatch reduction goals, and provides little guidance on how to reduce non-target catch and what would constitute acceptable bycatch levels. There is a widespread sense in much of the fisheries constituency that we and the Councils have not done enough to address this problem.

Getting a handle on bycatch and how to reduce and minimize it is expensive, perhaps more so than many other important uses of our fiscal resources. However, we do believe that there are some additions and changes that could be made to the Act that would improve the situation.

We are looking into the possibility of implementing a statistically valid level of mandatory observer coverage in key fisheries. We are also considering incentives to reduce bycatch in all fisheries where bycatch is a serious problem.

Matching Fishing Capacity to Available Resources. Overcapacity in the harvesting sector plagues not only a number of federally-managed fisheries, but also many fisheries around the world. The United States has been a leader in the international community in articulating the need to match

harvesting capacity to available fishery resources. We are currently working on a national plan of action for the reduction of overall fishing capacity in our fisheries. We have some tools in the Act to deal with this, but our efforts under the MSA and other authorities have largely been fractured and lacking effectiveness.

We believe that a lot more creative thinking needs to be applied to this problem. We would like the Committee to work with us in looking broadly at this issue, including the effect and implications of other agencies= programs.

Committee Issues

Mr. Chairman, we know that your staff has been working hard to put together some ideas for a draft bill to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. We have had the opportunity to look at the language that was included in the April 19, 2002, discussion draft, although we have not had the opportunity to examine it carefully and provide detailed comments. What I would like to do is comment on some of the main themes that we have seen in the draft bill.

Overfishing. The definition of Aoverfishing@ and Aoverfished@ that the Committee is considering is included in the options that we have been considering. When we complete our review the Administration will share proposed language with the Committee.

Data Collection. I appreciate the Committee=s commitment to improving the collection of data on our marine recreational fisheries. We believe that the emphasis for changes in the Act should be placed on collecting and managing the data. We are already working closely with the states and others to share marine recreational fisheries data. We look forward to working with you to improve these provisions. We also welcome your attention to the needs for collecting economic data from the processing sector.

Essential Fish Habitat. We recognize the importance of focusing essential fish habitat measures on those areas which are, in fact, most essential to fish stocks. The draft bill would amend the current requirement to minimize adverse effects of fishing on essential fish habitat. Under this draft bill, the requirement would only apply to fisheries for which there is available information on the growth, reproduction, or survival rates within habitats or production rates by habitat B what our essential fish habitat regulations refer to as Level 3 or Level 4 data -- or for fishing activities determined by a Council to jeopardize the ability to achieve maximum sustainable yield on a continuing basis. This type of conclusive scientific information does not exist for any of our fisheries, excepting a few salmon stocks for which there is some Level 3 or 4 information for small portions of their range in spawning rivers. We understand that we have limited resources to dedicate towards habitat protection and would be happy to work with the Committee to prioritize our activities to yield maximum habitat benefits.

Other Issues. The draft bill addresses a number of issues that we believe are critical, such as overcapacity, buyouts, ecosystems and bycatch. Some of these are issues that I have discussed elsewhere in this testimony, for example, bycatch. We would also support a research program for bycatch reduction gear research and development, and would suggest that this include a technology transfer program, and cooperative agreements with the states. We would be happy to work with the Committee to

improve the discussion draft language.

We very much appreciate the Committee focusing its attention on these and we look forward to working with your staff in the development of this legislation.

Conclusion

Mr. Chairman, these are exciting times in the history of our development and implementation of effective conservation and management for the Nation=s valuable marine fisheries. They are also often difficult times, and always challenging. You have all heard me talk about the need to make NOAA Fisheries more responsive and open, more transparent and timely, more effective and service-oriented. I have initiated a 5-year review of the implementation of the Sustainable Fisheries Act in order to get a better picture of what is working and how we can make the Act work better. I am convinced that we can make this work.

A lot of times it is natural for us to look at the negative. But I think we also have a lot going on that gives us reason to accentuate the positive. Our recent report to the Congress showed that the number of fisheries listed as overfished is beginning to decline.

The Sustainable Fisheries Act gave all of us tremendous impetus to begin moving seriously and effectively in new directions. I believe that much of the potential of the SFA still needs to be explored. We have also tried today to begin to outline some fundamental issues that many of us have been considering, and outline some solutions. Not all of these will be popular in all circles, but it is time that we discuss these issues forthrightly and work together toward some real improvements in how we manage marine fisheries. We in NOAA Fisheries look forward to working with the Committee, with your staff, with the Regional Fishery Management Councils, the states and the commercial fishing, recreational fishing, environmental, scientific and other marine fisheries communities.

Thank you, Mr. Chairman. I would be glad to answer any questions.